

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

REVEREND JACKIE C. KAUFFMAN, SR.:	CIVIL ACTION
ADMINISTRATOR OF THE	:
ESTATE OF JACKIE C.	:
KAUFFMAN, II, et al.,	:
	:
v.	:
	:
U.S. DEPARTMENT OF LABOR	: NO. 96-5929

MEMORANDUM ORDER

The plaintiffs in this action have filed a wrongful death action in a Pennsylvania state court arising from the death of two individuals in an industrial accident on December 6, 1993 at Knouse Foods Cooperative ("Knouse") in Orrtanna, Pennsylvania. The defendant in the state court action is Colonial Industrial Refrigeration whose employee, Mr. Gary Jackson, conducted a safety inspection of the Knouse facility prior to the accident. In the instant action, plaintiffs seek a declaratory judgment effectively setting aside the decision of the U.S. Department of Labor ("DOL") to deny plaintiff's request to interview and depose Eugene Rebert, an OSHA inspector who interviewed Mr. Jackson during that agency's investigation of the fatal accident.

Presently before the court is defendant DOL's Motion for a Protective Order pursuant to Fed. R. Civ. P. 26(c). Defendant seeks specifically to preclude the deposition of Robert Fink, Mr. Rebert's supervisor, and generally to preclude discovery not relevant to the propriety and reasonableness of the decision to deny access to Mr. Rebert or the validity of the

regulation under which the decision was made, the only issues in the instant case.

Plaintiffs assert that Mr. Fink was notified in writing by Knouse a year and a half after the accident that it just discovered the Knouse facility contained more than the permissible 9,999 pounds of ammonia, and that Mr. Fink failed to respond to plaintiffs' request for dates on which they could depose Mr. Rebert.

Defendant represents that Mr. Fink did not conduct any investigation of Knouse and did not make the decision regarding an interview or deposition of Mr. Rebert. Indeed, two exhibits attached to plaintiffs' own complaint show that Mr. Fink did not make the decision regarding Mr. Rebert at issue in this case. What Mr. Fink was told about a condition at Knouse more than a year after the accident is, to be charitable, of tangential relevance. Moreover, there is no suggestion that the letter and underlying information cannot be presented through an appropriate person from Knouse or someone other than Mr. Fink.

Mr. Fink is the OSHA director for the Harrisburg area. He is a government official with important and time-consuming responsibilities. It appears that he has no relevant testimony to give. There is good cause for the requested protective order.

The other discovery sought by plaintiffs is not relevant to the resolution of whether the 28 C.F.R. § 2.22 is a valid regulation or whether the DOL decision not to waive the prohibition against Mr. Rebert testifying was unreasonable or

abusive, the issues presented in this action. Indeed, such discovery would effectively undermine the viability of the regulation and decision at issue and thus in effect moot this case.

Mr. Rebert has sworn in his affidavit that he has no independent recollection of his interview with Mr. Jackson and has provided his contemporaneous handwritten notes of the interview to plaintiffs. Defendant has also given to plaintiffs the OSHA investigative file regarding the accident at Knouse.

After reviewing the substance of the requested discovery, the court agrees with defendant that further discovery is unwarranted with one exception. Defendant should supplement its responses to several requests for admissions and has been ordered to do so by the court in a separate order of this date.

ACCORDINGLY, this day of December, 1997, upon consideration of defendant's Motion for a Protective Order to Stay Discovery and plaintiffs' response thereto, **IT IS HEREBY ORDERED** that said Motion is **GRANTED** except for the limited supplemental responses to plaintiffs' request for admissions which defendant has been ordered to make by December 17, 1997.

BY THE COURT:

JAY C. WALDMAN, J.